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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 611/2018**

STATE (GNCT OF DELHI) ... Petitioner
Through: Mr. Hirein Sharma, APP

versus

AASHU & ORS ... Respondents
Through: None

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE ANU MALHOTRA

ORDER
20.09.2018

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Crl. MA32547/2018 (exemption)

1. Allowed, subject to all just exceptions.

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2. The State seeks leave to appeal against the impugned judgment dated 7th June 2018 passed by the learned Additional Sessions Judge/Special Judge (NDPS), West District, Tis Hazari Courts, Delhi acquitting the Respondents of the offences punishable under Sections 323/307/34 IPC. The impugned judgment was delivered in SC No.57817/2016 arising out of FIR No.144/2010 registered at PS Khyala.

3. The case of the prosecution is that the Respondents, armed with dangerous weapons like swords, *dandas*, knives, etc., got together and caused life threatening injuries to the three injured eye witnesses, i.e. Sanno

(PW-3), Israr (PW-4), and Kallo (PW-8).

4. There were several difficulties that the prosecution encountered during the trial. Two of the injured witnesses, i.e. PWs 3 and 4, turned hostile. PW-3 began her examination-in-chief by supporting the case of the prosecution, but a few months later, when she was cross-examined, she totally resiled from her earlier version and stated that she was under pressure by the police to support the case of the prosecution. Although it is sought to be urged by the APP appearing for the State that to the extent PW-3 supported the case of the prosecution in her examination-in-chief, her evidence should be relied upon, this Court nevertheless views PW-3 as an unreliable witness.

5. Added to this difficulty of PW-3 resiling from her earlier version is the fact that the medical evidence does not support the case set up by the prosecution. Dr. Jyoti Shukla (PW-1), the Medical Officer at Guru Gobind Hospital, who examined the injured witnesses on the date of the incident, i.e. 8th October 2010, certified the injuries to be “simple in nature”. While PW-8 had a lacerated wound on the right parietal region, PW-3 had a lacerated wound on the right finger (muscle deep) and contusion on the right parietal region over left shoulder. There is no medical evidence for the injuries to PW-4. Since the weapons allegedly used by the accused were not recovered, there was no occasion for the weapons to be shown to PW-1 to seek her opinion whether they could have caused the injuries she noticed. The result is that the evidence of PW-3, even to the extent of her examination-in-chief, does not stand corroborated by the medical evidence.

6. PW-4 also resiled from his previous statement made to the police. That

left only PW-8. She spoke about the injuries caused to PW-3 but as would be recalled, PW-3 herself resiled from her previous statement made to the police and maintained that none of the Respondents had caused any injuries to her or to PWs 4 and 8.

7. In the above scenario, there was no reliable and truthful witness to speak to the case of the prosecution. In the circumstances, the trial Court could not be faulted for concluding that the prosecution had failed to prove the case against the Respondents beyond reasonable doubt.

8. No grounds have been made out for interference with the impugned judgment of the trial Court. The petition for leave to appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

ANU MALHOTRA, J.

SEPTEMBER 20, 2018

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